

ORIGINAL



0000100335

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

JUN 25 P 1:35

ARIZONA CORPORATION COMMISSION
CLERK OF COMMISSION

In the matter of:

JOHN W. PACHECO and ANGELA
PACHECO, husband and wife;

BILL L. WALTERS and JACQUELYN
WALTERS, husband and wife;

FINANCIAL AMERICAN
CORPORATION, a Nevada corporation;

THE FINANCIAL AMERICAN GROUP,
LLC, a Delaware limited liability company;

AMERICAN APARTMENT FUND XI, LP,
a Delaware limited partnership;

Respondents.

DOCKET NO. S-20688A-09-0326

**NOTICE OF OPPORTUNITY FOR HEARING
REGARDING PROPOSED ORDER TO
CEASE AND DESIST, FOR RESTITUTION,
FOR ADMINISTRATIVE PENALTIES, AND
FOR OTHER AFFIRMATIVE ACTION**

Arizona Corporation Commission

DOCKETED

JUN 26 2009

DOCKETED BY

nr

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents JOHN W. PACHECO; BILL L. WALTERS; FINANCIAL AMERICAN CORPORATION; THE FINANCIAL AMERICAN GROUP, LLC; and AMERICAN APARTMENT FUND XI, LP, have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

...

...

...

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

RESPONDENTS

2. JOHN W. PACHECO ("PACHECO") is an individual who, at all relevant times, resided in Maricopa County, Arizona. PACHECO is the CEO, chairman of the board, and sole director of FINANCIAL AMERICAN CORPORATION.

3. BILL L. WALTERS ("WALTERS") is an individual who, at all relevant times, resided in California. WALTERS is the president of FINANCIAL AMERICAN CORPORATION and, at all relevant times, conducted business in Maricopa County.

4. FINANCIAL AMERICAN CORPORATION ("FAC") is a Nevada corporation doing business in Arizona. FAC is both the managing member of THE FINANCIAL AMERICAN GROUP, LLC, and the manager of AMERICAN APARTMENT MANAGEMENT COMPANY, LLC ("AAMC").

5. THE FINANCIAL AMERICAN GROUP, LLC ("TFAG") is a Delaware limited liability company doing business in Arizona.

6. AMERICAN APARTMENT FUND XI, LP ("AAF") is a Delaware limited partnership doing business in Arizona. AAMC is the general partner of AAF.

7. PACHECO, WALTERS, TFAG, and AAF may be referred to collectively as "Respondents."

8. ANGELA PACHECO was, at all relevant times, the spouse of PACHECO and JACQUELYN WALTERS was, at all relevant times, the spouse of WALTERS. ANGELA PACHECO and JACQUELYN WALTERS may be referred to collectively as "Respondent

1 Spouses.” Respondent Spouses are joined in this action under A.R.S. § 44-2031(C) solely for
2 purposes of determining the liability of the respective marital communities.

3 9. At all relevant times, PACHECO and WALTERS acted for their own benefit and for
4 the benefit or in furtherance of their and Respondent Spouses’ respective marital communities.

5 **III.**

6 **FACTS**

7 10. At all relevant times, Respondents were not registered as securities dealers or
8 salesmen.

9 11. From on or about September 2005 to March 2007 in Maricopa County, Arizona,
10 Respondents offered and sold to 13 investors \$5,600,000 of investment contracts issued by TFAG
11 and AAF with the title Deal Point Memorandum.

12 12. At all relevant times, the investment contracts referred to above were not registered
13 pursuant to Articles 6 or 7 of the Securities Act.

14 13. Touting their expertise in the real estate development process and their superior
15 knowledge of not only the Arizona real estate market but the southwest generally, including Nevada,
16 Texas, and New Mexico, PACHECO and WALTERS represented that they have many years of
17 experience identifying real estate to contract for and quickly sell or “flip” for substantial profit.

18 14. Respondents represented that TFAG and AAF would enter into contracts to purchase
19 real estate then flip the real estate before it was necessary to pay the purchase price and close escrow.

20 15. Respondents represented that the investors’ money would only be used by
21 Respondents as refundable earnest money deposits toward the purchases.

22 16. The Deal Point Memoranda state that the investors will receive the greater of 100
23 percent of their investment or 5 to 10 percent of the net profits on selling the contracted-for property.

24 17. Respondents deposited all of the investors’ money into Respondents’ bank accounts
25 for use by Respondents as described above and Respondents represented that they would profit
26 from flipping the real estate.

18. Other than paying Respondents, the investors had no duties to perform or responsibilities to fulfill in order to receive their promised profit. Respondents represented that they, not the investors, would locate real estate to purchase, find buyers to flip it to, and handle the purchase and flip.

19. Respondents represented that the investors' money would be returned if escrows did not close.

20. Respondents located land and apartment buildings to purchase, entered into contracts, opened escrows, and deposited earnest money. However, no escrows closed and, even though Respondents received refunds of earnest money deposits upon escrow cancellation, Respondents returned no money to the investors.

21. PACHECO and WALTERS spent \$2,011,000 of the investors' money on personal living expenses. Respondents spent the remainder of the investors' money on business expenses, including payroll, interior design services, and common area maintenance charges.

22. On several occasions, Respondents represented to the investors that a flip was about to take place when in fact it was not and the escrow was about to be or had already been cancelled.

23. Respondents did not disclose to the investors that WALTERS previously defaulted on more than \$100 million in loans he took for real estate investment; that he filed bankruptcy and discharged debts totaling \$220 million, including the real estate loans; and, that despite his bankruptcy, WALTERS was and has been able to enjoy millions of dollars of assets that he put beyond the reach of the Bankruptcy Court through transfers to his wife and certain trusts.

IV.

VIOLATION OF A.R.S. § 44-1841

(Offer or Sale of Unregistered Securities)

24. From on or about September 2005 to March 2007, Respondents offered or sold securities in the form of investment contracts within or from Arizona.

25. The securities referred to above were not registered pursuant to Articles 6 or 7 of the Securities Act.

26. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

27. Respondents offered or sold securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

28. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

29. In connection with the offer or sale of securities within or from Arizona, Respondents directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not limited to, the following:

a) Misrepresenting that the investors' money would only be used by Respondents as refundable earnest money deposits toward the purchase of real estate when it was in fact used by Respondents for personal living expenses and business expenses;

b) Misrepresenting that the investors' money would be returned if escrows did not close;

c) Misrepresenting to the investors that a flip was about to take place when in fact it was not and the escrow was about to be or had already been cancelled; and,

d) Failing to disclose to the investors that WALTERS previously defaulted on more than \$100 million in loans he took for real estate investment; that he filed bankruptcy and discharged debts totaling \$220 million, including the real estate loans; and that, despite his bankruptcy, WALTERS was and has been able to enjoy millions of dollars of assets that he put beyond the reach of the Bankruptcy Court through transfers to his wife and certain trusts.

30. This conduct violates A.R.S. § 44-1991.

31. FAC directly or indirectly controlled TFAG as its managing member and it directly or indirectly controlled AAF as the manager of its general partner AAMC. Therefore, FAC is jointly and severally liable under A.R.S. § 44-1999 to the same extent as TFAG and AAF for their violations of A.R.S. § 44-1991.

VII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order Respondents and FAC to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. § 44-2032;

2. Order Respondents and FAC to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order Respondents and FAC to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order that the respective marital communities of PACHECO, WALTERS, and Respondent Spouses be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and,

5. Order any other relief that the Commission deems appropriate.

VIII.

HEARING OPPORTUNITY

Each respondent, including Respondent Spouses, may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If a respondent requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail sabernal@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

IX.

ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if a respondent requests a hearing, the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from

1 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
2 <http://www.azcc.gov/divisions/hearings/docket.asp>.

3 Additionally, the answering respondent must serve the Answer upon the Division.
4 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-
5 delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix,
6 Arizona, 85007, addressed to Aaron S. Ludwig.

7 The Answer shall contain an admission or denial of each allegation in this Notice and the
8 original signature of the answering respondent or respondent's attorney. A statement of a lack of
9 sufficient knowledge or information shall be considered a denial of an allegation. An allegation
10 not denied shall be considered admitted.

11 When the answering respondent intends in good faith to deny only a part or a qualification
12 of an allegation, the respondent shall specify that part or qualification of the allegation and shall
13 admit the remainder. A respondent waives any affirmative defense not raised in the Answer.

14 The officer presiding over the hearing may grant relief from the requirement to file an
15 Answer for good cause shown.

16 Dated this 26th day of June 2009.

17 
18

19 Mark Dinell
20 Assistant Director of Securities
21
22
23
24
25
26